

REMARKS


In the Office Action, Applicant was required to elect among four groups of claims. Applicants provisionally elect claims 1-5 of Group I with traverse.

The Office Action suggested four groups of claims, namely: Group I – claims 1-5; Group II – claims 6-8; Group III – claims 9-39; and Group IV – claims 40-44. The claims of Groups I and II both define a method of creating a transverse cavity in a bone. The claims of Group I (claims 1-5) read on Figures 1-12, while the claims of Group II (claims 6-8) read on Figures 3-8, 11 and 12. It is believed that claim 1 of Group I is generic to independent claim 6 of Group II. In fact, claims 1 and 6 differ only in that claim 1 refers to "a blade pivotally mounted", while claim 6 refers to the more specific "flexible element hinge mounted". Both the "blade" and the "flexible hinge element" swing through an arc within the bone to define a transverse cavity. The flexible hinge element can be regarded as one form of blade capable of creating a cavity within a bone.

Consequently, it is believed that examination can proceed as to the claims of Groups I and II, namely claims 1-8. Claim 1 is generic within these two groups. Reconsideration of the restriction requirement in view of the foregoing is requested. Applicant will cancel non-elected claims 9-44 in response to a substantive action on this application.

Pursuant to the duties expressed in 37 C.F.R. §1.56, Applicants further cite U.S. Patent No. 3,030,951 that was recently discovered. Applicants only became aware of this reference within the last three months and are making this disclosure prior to an office action on the merits. Consequently, it is believed that no fee is required. However, if it is determined that a fee is necessary under 37 C.F.R. §1.97(c), the Commissioner is authorized to deduct such fee from Deposit Account 13-0014. A Form 1449 is included with this response, along with a copy of the reference (since this application was filed prior to June 30, 2003).

Respectfully submitted,



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